

AMENDED IN SENATE MAY 29, 1996
AMENDED IN ASSEMBLY JANUARY 22, 1996
AMENDED IN ASSEMBLY JANUARY 12, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 583

Introduced by Assembly Member Sher

February 17, 1995

An act to add Chapter 5 (commencing with Section 16100) to, and to repeal Chapter 1 (commencing with Section 15001) of, Title 2, of the Corporations Code, relating to partnerships.

LEGISLATIVE COUNSEL'S DIGEST

AB 583, as amended, Sher. Uniform Partnership Act of 1994.

Under existing law, partnerships are governed by the Uniform Partnership Act.

This bill would enact the Uniform Partnership Act of 1994, as specified, that would apply to partnerships formed on or after January 1, _____ 1999.

This bill would provide that partnerships formed before January 1, _____ 1999, are governed by the Uniform Partnership Act of 1994, except as specified. *This bill would make certain conforming changes.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 1 (commencing with Section 15001) of Title 2 of the Corporations Code is repealed.

SEC. 1.5. Section 15722 of the Corporations Code is amended to read:

15722. In any case not provided for in this chapter, ~~the provisions of limited partnerships shall be governed in the same manner as general partnerships would be governed pursuant to Section 15292, by the Uniform Partnership Act, Chapter 1 (commencing with Section 15001), govern 15001)), or the Revised Uniform Partnership Act (Chapter 15 (commencing with Section 15200))~~.

SEC. 2. Chapter 5 (commencing with Section 16100) is added to Title 2 of the Corporations Code, to read:

CHAPTER 5. UNIFORM PARTNERSHIP ACT OF 1994

Article 1. General Provisions

16100. This chapter may be cited as the Uniform Partnership Act of 1994.

16101. As used in this chapter, the following terms and phrases have the following meanings:

(1) “Business” includes every trade, occupation, and profession.

(2) “Debtor in bankruptcy” means a person who is the subject of either of the following:

(A) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application.

(B) A comparable order under federal, state, or foreign law governing insolvency.

(3) “Distribution” means a transfer of money or other property from a partnership to a partner in the partner’s capacity as a partner or to the partner’s transferee.

(4) “Partnership” means an association of two or more persons to carry on as coowners a business for profit

1 formed under Section 16202, predecessor law, or
2 comparable law of another jurisdiction.

3 (5) “Partnership agreement” means the agreement,
4 whether written, oral, or implied, among the partners
5 concerning the partnership, including amendments to
6 the partnership agreement.

7 (6) “Partnership at will” means a partnership in which
8 the partners have not agreed to remain partners until the
9 expiration of a definite term or the completion of a
10 particular undertaking.

11 (7) “Partnership interest” or “partner’s interest in the
12 partnership” means all of a partner’s interests in the
13 partnership, including the partner’s transferable interest
14 and all management and other rights.

15 (8) “Person” means an individual, corporation,
16 business trust, estate, trust, *partnership, limited*
17 *partnership, association, joint venture, limited liability*
18 *company, government, governmental subdivision,*
19 *agency, or instrumentality, or any other legal or*
20 *commercial entity.*

21 (9) “Property” means all property, real, personal, or
22 mixed, tangible or intangible, or any interest therein.

23 (10) “State” means a state of the United States, the
24 District of Columbia, the Commonwealth of Puerto Rico,
25 or any territory or insular possession subject to the
26 jurisdiction of the United States.

27 (11) “Statement” means a statement of partnership
28 authority under Section 16303, a statement of denial
29 under Section 16304, a statement of dissociation under
30 Section 16704, a statement of dissolution under Section
31 16805, a statement of merger under Section 16907, or an
32 amendment or cancellation of any of the foregoing.

33 (12) “Transfer” includes an assignment, conveyance,
34 lease, mortgage, deed, and encumbrance.

35 16102. (a) A person knows a fact if the person has
36 actual knowledge of it.

37 (b) A person has notice of a fact if any of the following
38 apply:

39 (1) The person knows of it.

40 (2) The person has received a notification of it.

1 (3) The person has reason to know it exists from all of
2 the facts known to the person at the time in question.

3 (c) A person notifies or gives a notification to another
4 by taking steps reasonably required to inform the other
5 person in ordinary course, whether or not the other
6 person ~~learns~~ knows of it.

7 (d) A person receives a notification when either of the
8 following apply:

9 ~~(1) The notification comes to the person's attention.~~

10 (1) *The person knows of the notification.*

11 (2) The notification is duly delivered at the person's
12 place of business or at any other place held out by the
13 person as a place for receiving communications.

14 (e) Except as otherwise provided in subdivision (f), a
15 person other than an individual knows, has notice, or
16 receives a notification of a fact for purposes of a particular
17 transaction when the individual conducting the
18 transaction knows, has notice, or receives a notification of
19 the fact, or in any event when the fact would have been
20 brought to the individual's attention if the person had
21 exercised reasonable diligence. The person exercises
22 reasonable diligence if it maintains reasonable routines
23 for communicating significant information to the
24 individual conducting the transaction and there is
25 reasonable compliance with the routines. Reasonable
26 diligence does not require an individual acting for the
27 person to communicate information unless the
28 communication is part of the individual's regular duties
29 or the individual has reason to know of the transaction
30 and that the transaction would be materially affected by
31 the information.

32 (f) A partner's knowledge, notice, or receipt of a
33 notification of a fact relating to the partnership is
34 effective immediately as knowledge by, notice to, or
35 receipt of a notification by the partnership, except in the
36 case of a fraud on the partnership committed by or with
37 the consent of that partner.

38 16103. (a) Except as otherwise provided in
39 subdivision (b), relations among the partners and
40 between the partners and the partnership are governed

1 by the partnership agreement. To the extent the
2 partnership agreement does not otherwise provide, this
3 chapter governs relations among the partners and
4 between the partners and the partnership.

5 (b) The partnership agreement may not do any of the
6 following:

7 (1) Vary the rights and duties under Section 16105
8 except to eliminate the duty to provide copies of
9 statements to all of the partners.

10 (2) Unreasonably restrict the right of access to books
11 and records under subdivision (b) of Section 16403, or the
12 right to be furnished with information under subdivision
13 (c) of Section 16403.

14 (3) Eliminate the duty of loyalty under subdivision (b)
15 of Section 16404 or paragraph (3) of subdivision (b) of
16 Section 16603, but, if not manifestly unreasonable, may do
17 either of the following:

18 (A) The partnership agreement may identify specific
19 types or categories of activities that do not violate the
20 duty of loyalty.

21 (B) All of the partners or a number or percentage
22 specified in the partnership agreement may authorize or
23 ratify, after full disclosure of all material facts, a specific
24 act or transaction that otherwise would violate the duty
25 of loyalty.

26 (4) Unreasonably reduce the duty of care under
27 subdivision (c) of Section 16404 or paragraph (3) of
28 subdivision (b) of Section 16603.

29 (5) Eliminate the obligation of good faith and fair
30 dealing under subdivision (d) of Section 16404, but the
31 partnership agreement may prescribe the standards by
32 which the performance of the obligation is to be
33 measured, if the standards are not manifestly
34 unreasonable.

35 (6) Vary the power to dissociate as a partner under
36 subdivision (a) Section 16602, except to require the
37 notice under paragraph (1) of Section 16601 to be in
38 writing.

39 (7) Vary the right of a court to expel a partner in the
40 events specified in paragraph (5) of Section 16601.

1 (8) Vary the requirement to wind up the partnership
2 business in cases specified in paragraph (4), (5), or (6) of
3 Section 16801.

4 (9) Restrict rights of third parties under this chapter.

5 16104. (a) Unless displaced by particular provisions
6 of this chapter, the principles of law and equity
7 supplement this chapter.

8 (b) If an obligation to pay interest arises under this
9 chapter and the rate is not specified, the rate is that
10 ~~specified in subdivision (a) of Section 685.010 of the Code~~
11 ~~of Civil Procedure. specified in Section 3289 of the Civil~~
12 ~~Code.~~

13 16105. (a) A statement may be filed in the office of
14 the Secretary of State. A certified copy of a statement that
15 is filed in an office in another state may be filed in the
16 office of the Secretary of State. Either filing has the effect
17 provided in this chapter with respect to partnership
18 property located in or transactions that occur in this state.

19 (b) A certified copy of a statement that has been filed
20 in the office of the Secretary of State and recorded in the
21 office for recording transfers of real property has the
22 effect provided for recorded statements in this chapter.
23 A recorded statement that is not a certified copy of a
24 statement filed in the office of the Secretary of State does
25 not have the effect provided for recorded statements in
26 this chapter.

27 (c) A statement filed by a partnership shall be
28 executed by at least two partners. Other statements shall
29 be executed by a partner or other person authorized by
30 this chapter. An individual who executes a statement as,
31 or on behalf of, a partner or other person named as a
32 partner in a statement shall personally declare under
33 penalty of perjury that the contents of the statement are
34 accurate.

35 (d) A person authorized by this chapter to file a
36 statement may amend or cancel the statement by filing
37 an amendment or cancellation that names the
38 partnership, identifies the statement, and states the
39 substance of the amendment or cancellation.

(e) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

(f) The Secretary of State may collect a fee for filing or providing a certified copy of a statement. The officer responsible for recording transfers of real property may collect a fee for recording a statement.

16106. The law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

16107. A partnership governed by this chapter is subject to any amendment to or repeal of this chapter.

16108. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

16109. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

16110. (a) Before January 1, 1999, this chapter governs only a partnership formed to which both of the following apply:

(1) The partnership was formed after the effective date of this chapter, unless that partnership is continuing the business of a dissolved partnership under Section 15041.

(2) The partnership, before the effective date of this chapter, elects, as provided by subdivision (c), to be governed by this chapter.

(b) On and after January 1, 1999, this chapter governs all partnerships.

(c) Before January 1, 1999, a partnership voluntarily may elect, in the manner provided in its

1 partnership agreement or by law for amending the
2 partnership agreement, to be governed by this chapter.
3 The provisions of this chapter relating to the liability of
4 the partnership's partners to third parties apply to limit
5 those partners' liability to a third party who had done
6 business with the partnership within one year preceding
7 the partnership's election to be governed by this chapter,
8 only if the third party knows or has received a notification
9 of the partnership's election to be governed by this
10 chapter.

11 16111. This chapter does not affect an action or
12 proceeding commenced or right accrued before this
13 chapter takes effect.

14

15 Article 2. Nature of Partnership

16

17 16201. A partnership is an entity distinct from its
18 partners.

19 16202. (a) Except as otherwise provided in
20 subdivision (b), the association of two or more persons to
21 carry on as coowners a business for profit forms a
22 partnership, whether or not the persons intend to form a
23 partnership.

24 (b) An association formed under a statute other than
25 this chapter, a predecessor statute, or a comparable
26 statute of another jurisdiction is not a partnership under
27 this chapter.

28 (c) In determining whether a partnership is formed,
29 the following rules apply:

30 (1) Joint tenancy, tenancy in common, tenancy by the
31 entireties, joint property, common property, or part
32 ownership does not by itself establish a partnership, even
33 if the coowners share profits made by the use of the
34 property.

35 (2) The sharing of gross returns does not by itself
36 establish a partnership, even if the persons sharing them
37 have a joint or common right or interest in property from
38 which the returns are derived.

39 (3) A person who receives a share of the profits of a
40 business is presumed to be a partner in the business,



1 unless the profits were received for any of the following
2 reasons:

3 (A) In payment of a debt by installments or otherwise.

4 (B) In payment for services as an independent
5 contractor or of wages or other compensation to an
6 employee.

7 (C) In payment of rent.

8 (D) In payment of an annuity or other retirement
9 benefit to a beneficiary, representative, or designee of a
10 deceased or retired partner.

11 (E) In payment of interest or other charge on a loan,
12 even if the amount of payment varies with the profits of
13 the business, including a direct or indirect present or
14 future ownership of the collateral, or rights to income,
15 proceeds, or increase in value derived from the collateral.

16 (F) In payment for the sale of the goodwill of a
17 business or other property by installments or otherwise.

18 16203. Property acquired by a partnership is property
19 of the partnership and not of the partners individually.

20 16204. (a) Property is partnership property if
21 acquired in the name of either of the following:

22 (1) The partnership.

23 (2) One or more partners with an indication in the
24 instrument transferring title to the property of the
25 person's capacity as a partner or of the existence of a
26 partnership but without an indication of the name of the
27 partnership.

28 (b) Property is acquired in the name of the
29 partnership by a transfer to either of the following:

30 (1) The partnership in its name.

31 (2) One or more partners in their capacity as partners
32 in the partnership, if the name of the partnership is
33 indicated in the instrument transferring title to the
34 property.

35 (c) Property is presumed to be partnership property
36 if purchased with partnership assets, even if not acquired
37 in the name of the partnership or of one or more partners
38 with an indication in the instrument transferring title to
39 the property of the person's capacity as a partner or of the
40 existence of a partnership.

(d) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

Article 3. Relations of Partners to Persons Dealing
with Partnership

16301. Subject to the effect of a statement of partnership authority under Section 16303 both of the following apply:

(1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.

(2) An act of a partner that is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

16302. (a) Partnership property may be transferred as follows:

(1) Subject to the effect of a statement of partnership authority under Section 16303, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

(2) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be

1 transferred by an instrument of transfer executed by the
2 persons in whose name the property is held.

3 (3) Partnership property held in the name of one or
4 more persons other than the partnership, without an
5 indication in the instrument transferring the property to
6 them of their capacity as partners or of the existence of
7 a partnership, may be transferred by an instrument of
8 transfer executed by the persons in whose name the
9 property is held.

10 (b) A partnership may recover partnership property
11 from a transferee only if it proves that execution of the
12 instrument of initial transfer did not bind the partnership
13 under Section 16301 and either of the following applies:

14 (1) As to a subsequent transferee who gave value for
15 property transferred under paragraph (1) or (2) of
16 subdivision (a), proves that the subsequent transferee
17 knew or had received a notification that the person who
18 executed the instrument of initial transfer lacked
19 authority to bind the partnership.

20 (2) As to a transferee who gave value for property
21 transferred under paragraph (3) of subdivision (a),
22 proves that the transferee knew or had received a
23 notification that the property was partnership property
24 and that the person who executed the instrument of
25 initial transfer lacked authority to bind the partnership.

26 (c) A partnership may not recover partnership
27 property from a subsequent transferee if the partnership
28 would not have been entitled to recover the property,
29 under subdivision (b), from any earlier transferee of the
30 property.

31 (d) If a person holds all of the partners' interests in the
32 partnership, all of the partnership property vests in that
33 person. The person may execute a document in the name
34 of the partnership to evidence vesting of the property in
35 that person and may file or record the document.

36 16303. (a) A partnership may file a statement of
37 partnership authority, which is subject to all of the
38 following:

39 (1) The statement shall include all of the following:

40 (A) The name of the partnership.

1 (B) The street address of its chief executive office and
2 of one office in this state, if there is one.

3 (C) The names and mailing addresses of all of the
4 partners or of an agent appointed and maintained by the
5 partnership for the purpose of subdivision (b).

6 (D) The names of the partners authorized to execute
7 an instrument transferring real property held in the
8 name of the partnership.

9 (2) The statement may specify the authority, or
10 limitations on the authority, of some or all of the partners
11 to enter into other transactions on behalf of the
12 partnership and any other matter.

13 (b) If a statement of partnership authority names an
14 agent, the agent shall maintain a list of the names and
15 mailing addresses of all of the partners and make it
16 available to any person on request for good cause shown.

17 (c) If a filed statement of partnership authority is
18 executed pursuant to subdivision (c) of Section 16105 and
19 states the name of the partnership but does not contain
20 all of the other information required by subdivision (a),
21 the statement nevertheless operates with respect to a
22 person not a partner as provided in subdivisions (d) and
23 (e).

24 ~~(d) Except as otherwise provided in subdivision (g), a~~

25 (d) A filed statement of partnership authority
26 supplements the authority of a partner to enter into
27 transactions on behalf of the partnership as follows:

28 (1) Except for transfers of real property, a grant of
29 authority contained in a filed statement of partnership
30 authority is conclusive in favor of a person who gives
31 value without knowledge to the contrary, so long as and
32 to the extent that a limitation on that authority is not then
33 contained in another filed statement. A filed cancellation
34 of a limitation on authority revives the previous grant of
35 authority.

36 (2) A grant of authority to transfer real property held
37 in the name of the partnership contained in a certified
38 copy of a filed statement of partnership authority
39 recorded in the office for recording transfers of that real
40 property is conclusive in favor of a person who gives value

1 without knowledge to the contrary, so long as and to the
2 extent that a certified copy of a filed statement containing
3 a limitation on that authority is not then of record in the
4 office for recording transfers of that real property. The
5 recording in the office for recording transfers of that real
6 property of a certified copy of a filed cancellation of a
7 limitation on authority revives the previous grant of
8 authority.

9 (e) A person not a partner is deemed to know of a
10 limitation on the authority of a partner to transfer real
11 property held in the name of the partnership if a certified
12 copy of the filed statement containing the limitation on
13 authority is of record in the office for recording transfers
14 of that real property.

15 (f) Except as otherwise provided in subdivisions (d)
16 and (e) and Sections 16704 and 16805, a person not a
17 partner is not deemed to know of a limitation on the
18 authority of a partner merely because the limitation is
19 contained in a filed statement.

20 ~~(g) Unless earlier canceled, a filed statement of~~
21 ~~partnership authority is canceled by operation of law five~~
22 ~~years after the date on which the statement, or the most~~
23 ~~recent amendment, was filed with the Secretary of State.~~

24 16304. A partner or other person named as a partner
25 in a filed statement of partnership authority or in a list
26 maintained by an agent pursuant to subdivision (b) of
27 Section 16303 may file a statement of denial stating the
28 name of the partnership and the fact that is being denied,
29 that may include denial of a person's authority or status
30 as a partner. A statement of denial is a limitation on
31 authority as provided in subdivisions (d) and (e) of
32 Section 16303.

33 16305. (a) A partnership is liable for loss or injury
34 caused to a person, or for a penalty incurred, as a result
35 of a wrongful act or omission, or other actionable conduct,
36 of a partner acting in the ordinary course of business of
37 the partnership or with authority of the partnership.

38 (b) If, in the course of the partnership's business or
39 while acting with authority of the partnership, a partner
40 receives or causes the partnership to receive money or

1 property of a person not a partner, and the money or
2 property is misapplied by a partner, the partnership is
3 liable for the loss.

4 16306. (a) Except as otherwise provided in
5 subdivision (b), all partners are liable jointly and
6 severally for all obligations of the partnership unless
7 otherwise agreed by the claimant or provided by law.

8 (b) A person admitted as a partner into an existing
9 partnership is not personally liable for any partnership
10 obligation incurred before the person's admission as a
11 partner.

12 16307. (a) A partnership may sue and be sued in the
13 name of the partnership.

14 (b) An action may be brought against the partnership
15 and any or all of the partners in the same action or in
16 separate actions.

17 (c) A judgment against a partnership is not by itself a
18 judgment against a partner. A judgment against a
19 partnership may not be satisfied from a partner's assets
20 unless there is also a judgment against the partner.

21 (d) A judgment creditor of a partner may not levy
22 execution against the assets of the partner to satisfy a
23 judgment based on a claim against the partnership unless
24 any of the following apply:

25 (1) A judgment based on the same claim has been
26 obtained against the partnership and a writ of execution
27 on the judgment has been returned unsatisfied in whole
28 or in part.

29 (2) The partnership is a debtor in bankruptcy.

30 (3) The partner has agreed that the creditor need not
31 exhaust partnership assets.

32 (4) A court grants permission to the judgment creditor
33 to levy execution against the assets of a partner based on
34 a finding that partnership assets subject to execution are
35 clearly insufficient to satisfy the judgment, that
36 exhaustion of partnership assets is excessively
37 burdensome, or that the grant of permission is an
38 appropriate exercise of the court's equitable powers.

39 (5) Liability is imposed on the partner by law or
40 contract independent of the existence of the partnership.

1 (e) This section applies to any partnership liability or
2 obligation resulting from a representation by a partner or
3 purported partner under Section 16308.

4 16308. (a) If a person, by words or conduct, purports
5 to be a partner, or consents to being represented by
6 another as a partner, in a partnership or with one or more
7 persons not partners, the purported partner is liable to a
8 person to whom the representation is made, if that
9 person, relying on the representation, enters into a
10 transaction with the actual or purported partnership. If
11 the representation, either by the purported partner or by
12 a person with the purported partner's consent, is made in
13 a public manner, the purported partner is liable to a
14 person who relies upon the purported partnership even
15 if the purported partner is not aware of being held out as
16 a partner to the claimant. If partnership liability results,
17 the purported partner is liable with respect to that
18 liability as if the purported partner were a partner. If no
19 partnership liability results, the purported partner is
20 liable with respect to that liability jointly and severally
21 with any other person consenting to the representation.

22 (b) If a person is thus represented to be a partner in
23 an existing partnership, or with one or more persons not
24 partners, the purported partner is an agent of persons
25 consenting to the representation to bind them to the
26 same extent and in the same manner as if the purported
27 partner were a partner, with respect to persons who enter
28 into transactions in reliance upon the representation. If
29 all of the partners of the existing partnership consent to
30 the representation, a partnership act or obligation results.
31 If fewer than all of the partners of the existing partnership
32 consent to the representation, the person acting and the
33 partners consenting to the representation are jointly and
34 severally liable.

35 (c) A person is not liable as a partner merely because
36 the person is named by another in a statement of
37 partnership authority.

38 (d) A person does not continue to be liable as a partner
39 merely because of a failure to file a statement of
40 dissociation or to amend a statement of partnership

1 authority to indicate the partner's dissociation from the
2 partnership.

3 (e) Except as otherwise provided in subdivisions (a)
4 and (b), persons who are not partners as to each other are
5 not liable as partners to other persons.

6

7 Article 4. Relations of Partners to Each Other and to
8 Partnership
9

10 16401. (a) Each partner is deemed to have an
11 account that is subject to both of the following:

12 (1) Credited with an amount equal to the money plus
13 the value of any other property, net of the amount of any
14 liabilities, the partner contributes to the partnership and
15 the partner's share of the partnership profits.

16 (2) Charged with an amount equal to the money plus
17 the value of any other property, net of the amount of any
18 liabilities, distributed by the partnership to the partner
19 and the partner's share of the partnership losses.

20 (b) Each partner is entitled to an equal share of the
21 partnership profits and is chargeable with a share of the
22 partnership losses in proportion to the partner's share of
23 the profits.

24 (c) A partnership shall reimburse a partner for
25 payments made and indemnify a partner for liabilities
26 incurred by the partner in the ordinary course of the
27 business of the partnership or for the preservation of its
28 business or property.

29 (d) A partnership shall reimburse a partner for an
30 advance to the partnership beyond the amount of capital
31 the partner agreed to contribute.

32 (e) A payment or advance made by a partner that
33 gives rise to a partnership obligation under subdivision
34 (c) or (d) constitutes a loan to the partnership that
35 accrues interest from the date of the payment or advance.

36 (f) Each partner has equal rights in the management
37 and conduct of the partnership business.

38 (g) A partner may use or possess partnership property
39 only on behalf of the partnership.



1 (h) A partner is not entitled to remuneration for
2 services performed for the partnership, except for
3 reasonable compensation for services rendered in
4 winding up the business of the partnership.

5 (i) A person may become a partner only with the
6 consent of all of the partners.

7 (j) A difference arising as to a matter in the ordinary
8 course of business of a partnership may be decided by a
9 majority of the partners. An act outside the ordinary
10 course of business of a partnership and an amendment to
11 the partnership agreement may be undertaken only with
12 the consent of all of the partners.

13 (k) This section does not affect the obligations of a
14 partnership to other persons under Section 16301.

15 16402. A partner has no right to receive, and may not
16 be required to accept, a distribution in kind.

17 16403. (a) A partnership shall keep its books and
18 records, if any, at its chief executive office.

19 (b) A partnership shall provide partners and their
20 agents and attorneys access to its books and records. It
21 shall provide former partners and their agents and
22 attorneys access to books and records pertaining to the
23 period during which they were partners. The right of
24 access provides the opportunity to inspect and copy books
25 and records during ordinary business hours. A
26 partnership may impose a reasonable charge, covering
27 the costs of labor and material, for copies of documents
28 furnished.

29 (c) Each partner and the partnership shall furnish to
30 a partner, and to the legal representative of a deceased
31 partner or partner under legal disability, both of the
32 following:

33 (1) Without demand, any information concerning the
34 partnership's business and affairs reasonably required for
35 the proper exercise of the partner's rights and duties
36 under the partnership agreement or this chapter; and

37 (2) On demand, any other information concerning the
38 partnership's business and affairs, except to the extent the
39 demand or the information demanded is unreasonable or
40 otherwise improper under the circumstances.

1 16404. (a) The fiduciary duties a partner owes to the
2 partnership and the other partners are the duty of loyalty
3 and the duty of care set forth in subdivisions (b) and (c).

4 (b) A partner's duty of loyalty to the partnership and
5 the other partners includes all of the following:

6 (1) To account to the partnership and hold as trustee
7 for it any property, profit, or benefit derived by the
8 partner in the conduct and winding up of the partnership
9 business or derived from a use by the partner of
10 partnership property or information, including the
11 appropriation of a partnership opportunity.

12 (2) To refrain from dealing with the partnership in the
13 conduct or winding up of the partnership business as or
14 on behalf of a party having an interest adverse to the
15 partnership.

16 (3) To refrain from competing with the partnership in
17 the conduct of the partnership business before the
18 dissolution of the partnership.

19 (c) A partner's duty of care to the partnership and the
20 other partners in the conduct and winding up of the
21 partnership business is limited to refraining from
22 engaging in grossly negligent or reckless conduct,
23 intentional misconduct, or a knowing violation of law.

24 (d) A partner shall discharge the duties to the
25 partnership and the other partners under this chapter or
26 under the partnership agreement and exercise any rights
27 consistently with the obligation of good faith and fair
28 dealing.

29 (e) A partner does not violate a duty or obligation
30 under this chapter or under the partnership agreement
31 merely because the partner's conduct furthers the
32 partner's own interest.

33 (f) A partner may lend money to and transact other
34 business with the partnership, and as to each loan or
35 transaction, the rights and obligations of the partner
36 regarding performance or enforcement are the same as
37 those of a person who is not a partner, subject to other
38 applicable law.

39 (g) This section applies to a person winding up the
40 partnership business as the personal or legal

1 representative of the last surviving partner as if the
2 person were a partner.

3 16405. (a) A partnership may maintain an action
4 against a partner for a breach of the partnership
5 agreement, or for the violation of a duty to the
6 partnership, causing harm to the partnership.

7 (b) A partner may maintain an action against the
8 partnership or another partner for legal or equitable
9 relief, with or without an accounting as to partnership
10 business, to do any of the following:

11 (1) Enforce the partner's rights under the partnership
12 agreement.

13 (2) Enforce the partner's rights under this chapter,
14 including all of the following:

15 (A) The partner's rights under Section 16401, 16403, or
16 16404.

17 (B) The partner's right on dissociation to have the
18 partner's interest in the partnership purchased pursuant
19 to Section 16701 or 16701.5, *or to* enforce any other right
20 under Article 6 (commencing with Section 16601) or 7
21 (commencing with Section 16701).

22 (C) The partner's right to compel a dissolution and
23 winding up of the partnership business under Section
24 16801 or enforce any other right under Article 8
25 (commencing with Section 16801).

26 (3) Enforce the rights and otherwise protect the
27 interests of the partner, including rights and interests
28 arising independently of the partnership relationship.

29 (c) The accrual of, and any time limitation on, a right
30 of action for a remedy under this section is governed by
31 other law. A right to an accounting upon a dissolution and
32 winding up does not revive a claim barred by law.

33 16406. (a) If a partnership for a definite term or
34 particular undertaking is continued, without an express
35 agreement, after the expiration of the term or completion
36 of the undertaking, the rights and duties of the partners
37 remain the same as they were at the expiration or
38 completion, so far as is consistent with a partnership at
39 will.

1 (b) If the partners, or those of them who habitually
2 acted in the business during the term or undertaking,
3 continue the business without any settlement or
4 liquidation of the partnership, they are presumed to have
5 agreed that the partnership will continue.

6
7 Article 5. Transferees and Creditors of Partner
8

9 16501. A partner is not a coowner of partnership
10 property and has no interest in partnership property that
11 can be transferred, either voluntarily or involuntarily.

12 16502. The only transferable interest of a partner in
13 the partnership is the partner's share of the profits and
14 losses of the partnership and the partner's right to receive
15 distributions. The interest is personal property.

16 16503. (a) A transfer, in whole or in part, of a
17 partner's transferable interest in the partnership is
18 permissible. However, a transfer does not do either of the
19 following:

20 (1) By itself cause the partner's dissociation or a
21 dissolution and winding up of the partnership business.

22 (2) As against the other partners or the partnership,
23 entitle the transferee, during the continuance of the
24 partnership, to participate in the management or
25 conduct of the partnership business, to require access to
26 information concerning partnership transactions, or to
27 inspect or copy the partnership books or records.

28 (b) A transferee of a partner's transferable interest in
29 the partnership has a right to all of the following:

30 (1) To receive, in accordance with the transfer,
31 distributions to which the transferor would otherwise be
32 entitled.

33 (2) To receive upon the dissolution and winding up of
34 the partnership business, in accordance with the transfer,
35 the net amount otherwise distributable to the transferor.

36 (3) To seek under paragraph (6) of Section 16801 a
37 judicial determination that it is equitable to wind up the
38 partnership business.

39 (c) In a dissolution and winding up, a transferee is
40 entitled to an account of partnership transactions only

1 from the date of the latest account agreed to by all of the
2 partners.

3 (d) Upon transfer, the transferor retains the rights and
4 duties of a partner other than the interest in distributions
5 transferred.

6 (e) A partnership need not give effect to a transferee's
7 rights under this section until it has notice of the transfer.

8 (f) A transfer of a partner's transferable interest in the
9 partnership in violation of a restriction on transfer
10 contained in the partnership agreement is ineffective as
11 to a person having notice of the restriction at the time of
12 transfer.

13 16504. (a) On application by a judgment creditor of
14 a partner or of a partner's transferee, a court having
15 jurisdiction may charge the transferable interest of the
16 judgment debtor to satisfy the judgment. The court may
17 appoint a receiver of the share of the distributions due or
18 to become due to the judgment debtor in respect of the
19 partnership and make all other orders, directions,
20 accounts, and inquiries the judgment debtor might have
21 made or that the circumstances of the case may require.

22 (b) A charging order constitutes a lien on the
23 judgment debtor's transferable interest in the
24 partnership. The court may order a foreclosure of the
25 interest subject to the charging order at any time. The
26 purchaser at the foreclosure sale has the rights of a
27 transferee.

28 (c) At any time before foreclosure, an interest charged
29 may be redeemed in any of the following manners:

30 (1) By the judgment debtor.

31 (2) With property other than partnership property, by
32 one or more of the other partners.

33 (3) With partnership property, by one or more of the
34 other partners with the consent of all of the partners
35 whose interests are not so charged.

36 (d) This chapter does not deprive a partner of a right
37 under exemption laws with respect to the partner's
38 interest in the partnership.

39 (e) This section provides the exclusive remedy by
40 which a judgment creditor of a partner or partner's

1 transferee may satisfy a judgment out of the judgment
2 debtor's transferable interest in the partnership.

3
4 Article 6. Partner's Dissociation

5
6 16601. A partner is dissociated from a partnership
7 upon the occurrence of any of the following events:

8 (1) The partnership's having notice of the partner's
9 express will to withdraw as a partner or on a later date
10 specified by the partner.

11 (2) An event agreed to in the partnership agreement
12 as causing the partner's dissociation.

13 (3) The partner's expulsion pursuant to the
14 partnership agreement.

15 (4) The partner's expulsion by the unanimous vote of
16 the other partners if any of the following apply:

17 (A) It is unlawful to carry on the partnership business
18 with that partner.

19 (B) There has been a transfer of all or substantially all
20 of that partner's transferable interest in the partnership,
21 other than a transfer for security purposes, or a court
22 order charging the partner's interest, that has not been
23 foreclosed.

24 (C) Within 90 days after the partnership notifies a
25 corporate partner that it will be expelled because it has
26 filed a certificate of dissolution or the equivalent, its
27 charter has been revoked, or its right to conduct business
28 has been suspended by the jurisdiction of its
29 incorporation, there is no revocation of the certificate of
30 dissolution or no reinstatement of its charter or its right
31 to conduct business.

32 (D) A partnership, *limited partnership*, or *limited*
33 *liability company* that is a partner has been dissolved and
34 its business is being wound up.

35 (5) On application by the partnership or another
36 partner, the partner's expulsion by judicial determination
37 because of any of the following:

38 (A) The partner engaged in wrongful conduct that
39 adversely and materially affected the partnership
40 business.

1 (B) The partner willfully or persistently committed a
2 material breach of the partnership agreement or of a duty
3 owed to the partnership or the other partners under
4 Section 16404.

5 (C) The partner engaged in conduct relating to the
6 partnership business that makes it not reasonably
7 practicable to carry on the business in partnership with
8 the partner.

9 (6) The partner's act or failure to act in any of the
10 following instances:

11 (A) By becoming a debtor in bankruptcy.

12 (B) By executing an assignment for the benefit of
13 creditors.

14 (C) By seeking, consenting to, or acquiescing in the
15 appointment of a trustee, receiver, or liquidator of that
16 partner or of all or substantially all of that partner's
17 property.

18 (D) By failing, within 90 days after the appointment,
19 to have vacated or stayed the appointment of a trustee,
20 receiver, or liquidator of the partner or of all or
21 substantially all of the partner's property obtained
22 without the partner's consent or acquiescence, or failing
23 within 90 days after the expiration of a stay to have the
24 appointment vacated.

25 (7) In the case of a partner who is an individual, by any
26 of the following:

27 (A) The partner's death.

28 (B) The appointment of a guardian or general
29 conservator for the partner.

30 (C) A judicial determination that the partner has
31 otherwise become incapable of performing the partner's
32 duties under the partnership agreement.

33 (8) In the case of a partner that is a trust or is acting as
34 a partner by virtue of being a trustee of a trust,
35 distribution of the trust's entire transferable interest in
36 the partnership, but not merely by reason of the
37 substitution of a successor trustee.

38 (9) In the case of a partner that is an estate or is acting
39 as a partner by virtue of being a personal representative
40 of an estate, distribution of the estate's entire transferable

1 interest in the partnership, but not merely by reason of
2 the substitution of a successor personal representative.

3 (10) Termination of a partner who is not an individual,
4 partnership, corporation, trust, or estate.

5 16602. (a) A partner has the power to dissociate at
6 any time, rightfully or wrongfully, by express will
7 pursuant to paragraph (1) of Section 16601.

8 (b) A partner's dissociation is wrongful only if any of
9 the following apply:

10 (1) It is in breach of an express provision of the
11 partnership agreement.

12 (2) In the case of a partnership for a definite term or
13 particular undertaking, before the expiration of the term
14 or the completion of the undertaking if any of the
15 following apply:

16 (A) The partner withdraws by express will, unless the
17 withdrawal follows within 90 days after another partner's
18 dissociation by death or otherwise under paragraphs (6)
19 to (10), inclusive, of Section 16601 or wrongful
20 dissociation under this subdivision.

21 (B) The partner is expelled by judicial determination
22 under paragraph (5) of Section 16601.

23 (C) The partner is dissociated by becoming a debtor
24 in bankruptcy.

25 (D) In the case of a partner who is not an individual,
26 trust other than a business trust, or estate, the partner is
27 expelled or otherwise dissociated because it willfully
28 dissolved or terminated.

29 (c) A partner who wrongfully dissociates is liable to
30 the partnership and to the other partners for damages
31 caused by the dissociation. The liability is in addition to
32 any other obligation of the partner to the partnership or
33 to the other partners.

34 ~~16603. (a) If a partner's dissociation results in a~~
35 ~~dissolution and winding up of the partnership business,~~
36 ~~Article 8 (commencing with Section 16801) applies,~~
37 ~~otherwise, Article 7 (commencing with Section 16701)~~
38 ~~applies.~~

39 ~~(b)~~

1 16603. Upon a partner's dissociation, all of the
2 following apply:

3 (1) The partner's right to participate in the
4 management and conduct of the partnership business
5 ~~terminates, except as otherwise provided in Section~~
6 ~~16803. terminates.~~

7 (2) The partner's duty of loyalty under paragraph (3)
8 of subdivision (b) of Section 16404 terminates.

9 (3) The partner's duty of loyalty under paragraphs (1)
10 and (2) of subdivision (b) of Section 16404 and duty of
11 care under subdivision (c) of Section 16404 continue only
12 with regard to matters arising and events occurring
13 before the partner's dissociation, ~~unless the partner~~
14 ~~participates in winding up the partnership's business~~
15 ~~pursuant to Section 16803.~~

16
17 Article 7. Partner's Dissociation When Business Not
18 Wound Up
19

20 16701. ~~(a) Except as provided in Section 16701.5, all~~
21 ~~of the following shall apply:~~

22 (a) If a partner is dissociated from a ~~partnership~~
23 ~~without resulting in a dissolution and winding up of the~~
24 ~~partnership business under Section 16801—~~ *partnership*,
25 the partnership shall cause the dissociated partner's
26 interest in the partnership to be purchased for a buyout
27 price determined pursuant to subdivision (b).

28 (b) The buyout price of a dissociated partner's interest
29 is the amount that would have been distributable to the
30 dissociating partner under subdivision (b) of Section
31 16807 if, on the date of dissociation, the assets of the
32 partnership were sold at a price equal to the greater of the
33 liquidation value or the value based on a sale of the entire
34 business as a going concern without the dissociated
35 partner and the partnership was wound up as of that date.
36 Interest shall be paid from the date of dissociation to the
37 date of payment.

38 (c) Damages for wrongful dissociation under
39 subdivision (b) of Section 16602, and all other amounts
40 owing, whether or not presently due, from the dissociated

1 partner to the partnership, shall be offset against the
2 buyout price. Interest shall be paid from the date the
3 amount owed becomes due to the date of payment.

4 (d) A partnership shall indemnify a dissociated
5 partner whose interest is being purchased against all
6 partnership liabilities, whether incurred before or after
7 the dissociation, except liabilities incurred by an act of the
8 dissociated partner under Section 16702.

9 (e) If no agreement for the purchase of a dissociated
10 partner's interest is reached within 120 days after a
11 written demand for payment, the partnership shall pay,
12 or cause to be paid, in cash to the dissociated partner the
13 amount the partnership estimates to be the buyout price
14 and accrued interest, reduced by any offsets and accrued
15 interest under subdivision (c).

16 (f) If a deferred payment is authorized under
17 subdivision (h), the partnership may tender a written
18 offer to pay the amount it estimates to be the buyout price
19 and accrued interest, reduced by any offsets under
20 subdivision (c), stating the time of payment, the amount
21 and type of security for payment, and the other terms and
22 conditions of the obligation.

23 (g) The payment or tender required by subdivision
24 (e) or (f) shall be accompanied by all of the following:

25 (1) A statement of partnership assets and liabilities as
26 of the date of dissociation.

27 (2) The latest available partnership balance sheet and
28 income statement, if any.

29 (3) An explanation of how the estimated amount of the
30 payment was calculated.

31 (4) Written notice that the payment is in full
32 satisfaction of the obligation to purchase unless, within
33 120 days after the written notice, the dissociated partner
34 commences an action to determine the buyout price, any
35 offsets under subdivision (c), or other terms of the
36 obligation to purchase.

37 (h) A partner who wrongfully dissociates before the
38 expiration of a definite term or the completion of a
39 particular undertaking is not entitled to payment of any
40 portion of the buyout price until the expiration of the

1 term or completion of the undertaking, unless the
2 partner establishes to the satisfaction of the court that
3 earlier payment will not cause undue hardship to the
4 business of the partnership. A deferred payment shall be
5 adequately secured and bear interest.

6 (i) A dissociated partner may maintain an action
7 against the partnership, pursuant to subparagraph (B) of
8 paragraph (2) of subdivision (b) of Section 16405, to
9 determine the buyout price of that partner's interest, any
10 offsets under subdivision (c), or other terms of the
11 obligation to purchase. The action shall be commenced
12 within 120 days after the partnership has tendered
13 payment or an offer to pay or within one year after
14 written demand for payment if no payment or offer to
15 pay is tendered. The court shall determine the buyout
16 price of the dissociated partner's interest, any offset due
17 under subdivision (c), and accrued interest, and enter
18 judgment for any additional payment or refund. If
19 deferred payment is authorized under subdivision (h),
20 the court shall also determine the security for payment
21 and other terms of the obligation to purchase. The court
22 may assess reasonable attorney's fees and the fees and
23 expenses of appraisers or other experts for a party to the
24 action, in amounts the court finds equitable, against a
25 party that the court finds acted arbitrarily, vexatiously, or
26 not in good faith. The finding may be based on the
27 partnership's failure to tender payment or an offer to pay
28 or to comply with subdivision (g).

29 *16701.5. (a) Section 16701 shall not apply to any*
30 *dissociation that occurs within the 90 days prior to a*
31 *dissolution under Section 16801.*

32 *(b) For dissociations occurring within 90 days prior to*
33 *the dissolution, both of the following shall apply:*

34 *(1) All partners who dissociated within 90 days prior to*
35 *the dissolution shall be treated as partners under Section*
36 *16807.*

37 *(2) Any damages for wrongful dissociation under*
38 *subdivision (b) of Section 16602 and all other amounts*
39 *owed by the dissociated partner to the partnership,*
40 *whether or not presently due, shall be taken into account*

1 *in determining the amount distributable to the*
2 *dissociated partner under Section 16807.*

3 16702. (a) For two years after a partner dissociates
4 ~~without resulting in a dissolution and winding up of the~~
5 ~~partnership business~~, the partnership, including a
6 surviving partnership under Article 9 (commencing with
7 Section 16901), is bound by an act of the dissociated
8 partner that would have bound the partnership under
9 Section 16301 before dissociation only if at the time of
10 entering into the transaction all of the following apply to
11 the other party:

12 (1) The other party reasonably believed that the
13 dissociated partner was then a partner.

14 (2) The other party did not have notice of the
15 partner's dissociation.

16 (3) The other party is not deemed to have had
17 knowledge under subdivision (e) of Section 16303 or
18 notice under subdivision (c) of Section 16704.

19 (b) A dissociated partner is liable to the partnership
20 for any damage caused to the partnership arising from an
21 obligation incurred by the dissociated partner after
22 dissociation for which the partnership is liable under
23 subdivision (a).

24 16703. (a) A partner's dissociation does not of itself
25 discharge the partner's liability for a partnership
26 obligation incurred before dissociation. A dissociated
27 partner is not liable for a partnership obligation incurred
28 after dissociation, except as otherwise provided in
29 subdivision (b).

30 (b) A partner who dissociates ~~without resulting in a~~
31 ~~dissolution and winding up of the partnership business~~ is
32 *is* liable as a partner to the other party in a transaction
33 entered into by the partnership, or a surviving
34 partnership under Article 9 (commencing with Section
35 16901), within two years after the partner's dissociation,
36 only if at the time of entering into the transaction all of
37 the following apply to the other party:

38 (1) The other party reasonably believed that the
39 dissociated partner was then a partner.

(2) The other party did not have notice of the partner's dissociation.

(3) The other party is not deemed to have had knowledge under subdivision (e) of Section 16303 or notice under subdivision (c) of Section 16704.

(c) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(d) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

16704. (a) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(b) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of subdivisions (d) and (e) of Section 16303.

(c) For the purposes of paragraph (3) of subdivision (a) of Section 16702 and paragraph (3) of subdivision (b) of Section 16703, a person not a partner is deemed to have notice of the dissociation 90 days after the statement of dissociation is filed.

16705. Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

Article 8. Winding Up Partnership Business

16801. A partnership is dissolved, and its business shall be wound up, only upon the occurrence of any of the following events:

(1) In a partnership at will, ~~the partnership's having notice from a partner, other than a partner who is dissociated under paragraphs (2) to (10), inclusive, of~~

1 ~~Section 16601, of that partner's express will to withdraw~~
2 ~~as a partner, or on a later date specified by the partner.~~
3 *by the express will to dissolve and wind up the*
4 *partnership business of at least half of the partners,*
5 *including partners, other than wrongfully dissociating*
6 *partners, who have dissociated within the preceding 90*
7 *days, and for which purpose a dissociation under*
8 *subdivision (1) of Section 16601 constitutes an expression*
9 *of that partner's will to dissolve and wind up the*
10 *partnership business.*

11 (2) In a partnership for a definite term or particular
12 undertaking, when any of the following occurs:

13 (A) After the expiration of 90 days after a partner's
14 dissociation by death or otherwise under paragraphs (6)
15 to (10), inclusive, of Section 16601, or a partner's wrongful
16 dissociation under subdivision (b) of Section 16602 unless
17 before that time a majority in interest of the ~~remaining~~
18 partners, including partners who have rightfully
19 dissociated pursuant to subparagraph (A) of paragraph
20 (2) of subdivision (b) of Section 16602, agree to continue
21 the partnership.

22 (B) The express will of all of the partners to wind up
23 the partnership business.

24 (C) The expiration of the term or the completion of
25 the undertaking.

26 (3) An event agreed to in the partnership agreement
27 resulting in the winding up of the partnership business.

28 (4) An event that makes it unlawful for all or
29 substantially all of the business of the partnership to be
30 continued, but a cure of illegality within 90 days after
31 notice to the partnership of the event is effective
32 retroactively to the date of the event for purposes of this
33 section.

34 (5) On application by a partner, a judicial
35 determination that any of the following apply:

36 (A) The economic purpose of the partnership is likely
37 to be unreasonably frustrated.

38 (B) Another partner has engaged in conduct relating
39 to the partnership business that makes it not reasonably

1 practicable to carry on the business in partnership with
2 that partner.

3 (C) It is not otherwise reasonably practicable to carry
4 on the partnership business in conformity with the
5 partnership agreement.

6 (6) On application by a transferee of a partner's
7 transferable interest, a judicial determination that it is
8 equitable to wind up the partnership business ~~in either of~~
9 ~~the following instances:~~

10 ~~(A) After~~ *after* the expiration of the term or
11 completion of the undertaking, if the partnership was for
12 a definite term or particular undertaking at the time of
13 the transfer or entry of the charging order that gave rise
14 to the transfer.

15 ~~(B) At any time, if the partnership was a partnership~~
16 ~~at will at the time of the transfer or entry of the charging~~
17 ~~order that gave rise to the transfer.~~

18 16802. (a) Subject to subdivision (b), a partnership
19 continues after dissolution only for the purpose of
20 winding up its business. The partnership is terminated
21 when the winding up of its business is completed.

22 (b) At any time after the dissolution of a partnership
23 and before the winding up of its business is completed, all
24 of the partners, including any dissociating partner other
25 than a wrongfully dissociating partner, may waive the
26 right to have the partnership's business wound up and the
27 partnership terminated. In that event both of the
28 following apply:

29 (1) The partnership resumes carrying on its business
30 as if dissolution had never occurred, and any liability
31 incurred by the partnership or a partner after the
32 dissolution and before the waiver is determined as if
33 dissolution had never occurred.

34 (2) The rights of a third party accruing under
35 paragraph (1) of Section 16804 or arising out of conduct
36 in reliance on the dissolution before the third party knew
37 or received a notification of the waiver may not be
38 adversely affected.

39 16803. (a) After dissolution, a partner who has not
40 ~~wrongfully~~ dissociated may participate in winding up the

1 partnership's business, but on application of any partner,
2 partner's legal representative, or transferee, the court,
3 for good cause shown, may order judicial supervision of
4 the winding up.

5 (b) The legal representative of the last surviving
6 partner may wind up a partnership's business.

7 (c) A person winding up a partnership's business may
8 preserve the partnership business or property as a going
9 concern for a reasonable time, prosecute and defend
10 actions and proceedings, whether civil, criminal, or
11 administrative, settle and close the partnership's
12 business, dispose of and transfer the partnership's
13 property, discharge the partnership's liabilities,
14 distribute the assets of the partnership pursuant to
15 Section 16807, settle disputes by mediation or arbitration,
16 and perform other necessary acts.

17 16804. Subject to Section 16805, a partnership is
18 bound by a partner's act after dissolution that is either of
19 the following:

20 (1) Appropriate for winding up the partnership
21 business.

22 (2) Would have bound the partnership under Section
23 16301 before dissolution, if the other party to the
24 transaction did not have notice of the dissolution.

25 16805. (a) After dissolution, a partner who has not
26 wrongfully dissociated may file a statement of dissolution
27 stating the name of the partnership and that the
28 partnership has dissolved and is winding up its business.

29 (b) A statement of dissolution cancels a filed statement
30 of partnership authority for the purposes of subdivision
31 (d) of Section 16303 and is a limitation on authority for the
32 purposes of subdivision (e) of Section 16303.

33 (c) For the purposes of Sections 16301 and 16804, a
34 person not a partner is deemed to have notice of the
35 dissolution and the limitation on the partners' authority
36 as a result of the statement of dissolution 90 days after it
37 is filed.

38 (d) After filing and, if appropriate, recording a
39 statement of dissolution, a dissolved partnership may file
40 and, if appropriate, record a statement of partnership

1 authority that will operate with respect to a person not a
2 partner as provided in subdivisions (d) and (e) of Section
3 16303 in any transaction, whether or not the transaction
4 is appropriate for winding up the partnership business.

5 16806. (a) Except as otherwise provided in
6 subdivision (b), after dissolution a partner is liable to the
7 other partners for the partner's share of any partnership
8 liability incurred under Section 16804.

9 (b) A partner who, with knowledge of the dissolution,
10 incurs a partnership liability under paragraph (2) of
11 Section 16804 by an act that is not appropriate for winding
12 up the partnership business is liable to the partnership for
13 any damage caused to the partnership arising from the
14 liability.

15 16807. (a) In winding up a partnership's business, the
16 assets of the partnership, including the contributions of
17 the partners required by this section, shall be applied to
18 discharge its obligations to creditors, including, to the
19 extent permitted by law, partners who are creditors. Any
20 surplus shall be applied to pay in cash the net amount
21 distributable to partners in accordance with their right to
22 distributions under subdivision (b).

23 (b) Each partner is entitled to a settlement of all
24 partnership accounts upon winding up the partnership
25 business. In settling accounts among the partners, the
26 profits and losses that result from the liquidation of the
27 partnership assets shall be credited and charged to the
28 partners' accounts. The partnership shall make a
29 distribution to a partner in an amount equal to any excess
30 of the credits over the charges in the partner's account.
31 A partner shall contribute to the partnership an amount
32 equal to any excess of the charges over the credits in the
33 partner's account.

34 (c) If a partner fails to contribute, all of the other
35 partners shall contribute, in the proportions in which
36 those partners share partnership losses, the additional
37 amount necessary to satisfy the partnership obligations. A
38 partner or partner's legal representative may recover
39 from the other partners any contributions the partner

1 makes to the extent the amount contributed exceeds that
2 partner's share of the partnership obligations.

3 (d) After the settlement of accounts, each partner
4 shall contribute, in the proportion in which the partner
5 shares partnership losses, the amount necessary to satisfy
6 partnership obligations that were not known at the time
7 of the settlement.

8 (e) The estate of a deceased partner is liable for the
9 partner's obligation to contribute to the partnership.

10 (f) An assignee for the benefit of creditors of a
11 partnership or a partner, or a person appointed by a court
12 to represent creditors of a partnership or a partner, may
13 enforce a partner's obligation to contribute to the
14 partnership.

15

16 Article 9. Conversions and Mergers

17

18 16901. In this article, the following terms have the
19 following meanings:

20 (1) "General partner" means a partner in a
21 partnership and a general partner in a limited
22 partnership.

23 (2) "Limited partner" means a limited partner in a
24 limited partnership.

25 (3) "Limited partnership" means a limited
26 partnership created under Chapter 3 (commencing with
27 Section 15611), predecessor law, or comparable law of
28 another jurisdiction.

29 (4) "Partner" includes both a general partner and a
30 limited partner.

31 16902. (a) A partnership may be converted to a
32 limited partnership pursuant to this section.

33 (b) The terms and conditions of a conversion of a
34 partnership to a limited partnership shall be approved by
35 all of the partners or by a number or percentage specified
36 for conversion in the partnership agreement.

37 (c) After the conversion is approved by the partners,
38 the partnership shall file a certificate of limited
39 partnership in the jurisdiction in which the limited



1 partnership is to be formed. The certificate shall include
2 all of the following:

3 (1) A statement that the partnership was converted to
4 a limited partnership from a partnership.

5 (2) Its former name.

6 (3) A statement of the number of votes cast by the
7 partners for and against the conversion and, if the vote is
8 less than unanimous, the number or percentage required
9 to approve the conversion under the partnership
10 agreement.

11 (d) The conversion takes effect when the certificate of
12 limited partnership is filed or at any later date specified
13 in the certificate.

14 (e) A general partner who becomes a limited partner
15 as a result of the conversion remains liable as a general
16 partner for an obligation incurred by the partnership
17 before the conversion takes effect. If the other party to a
18 transaction with the limited partnership reasonably
19 believes when entering the transaction that the limited
20 partner is a general partner, the limited partner is liable
21 for an obligation incurred by the limited partnership
22 within 90 days after the conversion takes effect. The
23 limited partner's liability for all other obligations of the
24 limited partnership incurred after the conversion takes
25 effect is that of a limited partner as provided in Chapter
26 3 (commencing with Section 15611).

27 16903. (a) A limited partnership may be converted
28 to a partnership pursuant to this section.

29 (b) Notwithstanding a provision to the contrary in a
30 limited partnership agreement, the terms and conditions
31 of a conversion of a limited partnership to a partnership
32 shall be approved by all of the partners.

33 (c) After the conversion is approved by the partners,
34 the limited partnership shall cancel its certificate of
35 limited partnership.

36 (d) The conversion takes effect when the certificate of
37 limited partnership is canceled.

38 (e) A limited partner who becomes a general partner
39 as a result of the conversion remains liable only as a
40 limited partner for an obligation incurred by the limited

1 partnership before the conversion takes effect. The
2 partner is liable as a general partner for an obligation of
3 the partnership incurred after the conversion takes
4 effect.

5 16904. (a) A partnership or limited partnership that
6 has been converted pursuant to this article is for all
7 purposes the same entity that existed before the
8 conversion.

9 (b) When a conversion takes effect, all of the following
10 apply:

11 (1) All property owned by the converting partnership
12 or limited partnership remains vested in the converted
13 entity.

14 (2) All obligations of the converting partnership or
15 limited partnership continue as obligations of the
16 converted entity.

17 (3) An action or proceeding pending against the
18 converting partnership or limited partnership may be
19 continued as if the conversion had not occurred.

20 16905. (a) Pursuant to a plan of merger approved as
21 provided in subdivision (c), a partnership may be merged
22 with one or more partnerships or limited partnerships.

23 (b) The plan of merger shall set forth all of the
24 following:

25 (1) The name of each partnership or limited
26 partnership that is a party to the merger.

27 (2) The name of the surviving entity into which the
28 other partnerships or limited partnerships will merge.

29 (3) Whether the surviving entity is a partnership or a
30 limited partnership and the status of each partner.

31 (4) The terms and conditions of the merger.

32 (5) The manner and basis of converting the interests
33 of each party to the merger into interests or obligations
34 of the surviving entity, or into money or other property
35 in whole or part.

36 (6) The street address of the surviving entity's chief
37 executive office.

38 (c) The plan of merger shall be approved as follows:



1 (1) In the case of a partnership that is a party to the
2 merger, by all of the partners, or a number or percentage
3 specified for merger in the partnership agreement.

4 (2) In the case of a limited partnership that is a party
5 to the merger, by the vote required for approval of a
6 merger by the law of the state or foreign jurisdiction in
7 which the limited partnership is organized and, in the
8 absence of such a specifically applicable law, by all of the
9 partners, notwithstanding a provision to the contrary in
10 the partnership agreement.

11 (d) After a plan of merger is approved and before the
12 merger takes effect, the plan may be amended or
13 abandoned as provided in the plan.

14 (e) The merger takes effect on the later of any of the
15 following:

16 (1) The approval of the plan of merger by all parties
17 to the merger, as provided in subdivision (c).

18 (2) The filing of all documents required by law to be
19 filed as a condition to the effectiveness of the merger.

20 (3) Any effective date specified in the plan of merger.

21 16906. (a) When a merger takes effect, all of the
22 following apply:

23 (1) The separate existence of every partnership or
24 limited partnership that is a party to the merger, other
25 than the surviving entity, ceases.

26 (2) All property owned by each of the merged
27 partnerships or limited partnerships vests in the surviving
28 entity.

29 (3) All obligations of every partnership or limited
30 partnership that is a party to the merger become the
31 obligations of the surviving entity.

32 (4) An action or proceeding pending against a
33 partnership or limited partnership that is a party to the
34 merger may be continued as if the merger had not
35 occurred, or the surviving entity may be substituted as a
36 party to the action or proceeding.

37 (b) The Secretary of State is the agent for service of
38 process in an action or proceeding against a surviving
39 foreign partnership or limited partnership to enforce an
40 obligation of a domestic partnership or limited

1 partnership that is a party to a merger. The surviving
2 entity shall promptly notify the Secretary of State of the
3 mailing address of its chief executive office and of any
4 change of address. Upon receipt of process, the Secretary
5 of State shall mail a copy of the process to the surviving
6 foreign partnership or limited partnership.

7 (c) A partner of the surviving partnership or limited
8 partnership is liable for all of the following:

9 (1) All obligations of a party to the merger for which
10 the partner was personally liable before the merger.

11 (2) All other obligations of the surviving entity
12 incurred before the merger by a party to the merger, but
13 those obligations may be satisfied only out of property of
14 the entity.

15 (3) All obligations of the surviving entity incurred
16 after the merger takes effect, but those obligations may
17 be satisfied only out of property of the entity if the partner
18 is a limited partner.

19 (d) If the obligations incurred before the merger by a
20 party to the merger are not satisfied out of the property
21 of the surviving partnership or limited partnership, the
22 general partners of that party immediately before the
23 effective date of the merger shall contribute the amount
24 necessary to satisfy that party's obligations to the
25 surviving entity, in the manner provided in Section 16807
26 or in the Limited Partnership Act of the jurisdiction in
27 which the party was formed, as the case may be, as if the
28 merged party were dissolved.

29 (e) A partner of a party to a merger who does not
30 become a partner of the surviving partnership or limited
31 partnership is dissociated from the entity, of which that
32 partner was a partner, as of the date the merger takes
33 effect. The surviving entity shall cause the partner's
34 interest in the entity to be purchased under Section 16701
35 or another statute specifically applicable to that partner's
36 interest with respect to a merger. The surviving entity is
37 bound under Section 16702 by an act of a general partner
38 dissociated under this subdivision, and the partner is
39 liable under Section 16703 for transactions entered into
40 by the surviving entity after the merger takes effect.

1 16907. (a) After a merger, the surviving partnership
2 or limited partnership may file a statement that one or
3 more partnerships or limited partnerships have merged
4 into the surviving entity.

5 (b) A statement of merger shall contain all of the
6 following:

7 (1) The name of each partnership or limited
8 partnership that is a party to the merger.

9 (2) The name of the surviving entity into which the
10 other partnerships or limited partnership were merged.

11 (3) The street address of the surviving entity's chief
12 executive office and of an office in this state, if any.

13 (4) Whether the surviving entity is a partnership or a
14 limited partnership.

15 (c) Except as otherwise provided in subdivision (d),
16 for the purposes of Section 16302, property of the
17 surviving partnership or limited partnership that before
18 the merger was held in the name of another party to the
19 merger is property held in the name of the surviving
20 entity upon filing a statement of merger.

21 (d) For the purposes of Section 16302, real property of
22 the surviving partnership or limited partnership that
23 before the merger was held in the name of another party
24 to the merger is property held in the name of the
25 surviving entity upon recording a certified copy of the
26 statement of merger in the office for recording transfers
27 of that real property.

28 (e) A filed and, if appropriate, recorded statement of
29 merger, executed and declared to be accurate pursuant
30 to subdivision (c) of Section 16105, stating the name of a
31 partnership or limited partnership that is a party to the
32 merger in whose name property was held before the
33 merger and the name of the surviving entity, but not
34 containing all of the other information required by
35 subdivision (b), operates with respect to the partnerships
36 or limited partnerships named to the extent provided in
37 subdivisions (c) and (d).

38 16908. This article is not exclusive. Partnerships or
39 limited partnerships may be converted or merged in any
40 other manner provided by law.

1 SEC. 3. *Section 3940 of the Public Resources Code is*
2 *amended to read:*

3 3940. A mining partnership exists when two or more
4 persons who own or acquire a mining claim for the
5 purpose of working it and extracting the mineral
6 therefrom actually engage in working the claim. *To the*
7 *extent not inconsistent with this chapter, mining*
8 *partnerships shall be governed in the same manner as*
9 *other general partnerships would be governed pursuant*
10 *to Section 15292 of the Corporations Code, by the*
11 *Uniform Partnership Act (Chapter 1 (commencing with*
12 *Section 15001) of Title 2 of the Corporations Code), or the*
13 *Revised Uniform Partnership Act (Chapter 1.5*
14 *(commencing with Section 15200) of Title 2 of the*
15 *Corporations Code).*

16 SEC. 4. Section 1 of this act shall become operative on
17 1999.

